***THE HON'BLE SMT JUSTICE T.MEENA KUMARI**

AND

THE HON'BLE SRI JUSTICE L. NARASIMHA REDDY

W.A.No. 491 of 2005

% 13.04.2005

Ch.Appala Reddy

..... APPELLANT

Vs.

$ 1. Eastern Power Distribution Company of A.P., Limited and others

… RESPONDENTS

! Counsel for the Appellant : MR.P.V.R.SARMA, FOR DR.P.B.VIJAY KUMAR

^ Counsel for the Respondents : MR.KISHORE SAMINENI (SC FOR AP TRANSCO)

<Gist :

>Head Note :

? AIR 2001 SC 343

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

WEDNESDAY, THE THIRTEENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MRS JUSTICE T.MEENA KUMARI

and
THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT APPEAL No: 491 of 2005

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 15/02/2005 in WP NO:24324 OF 2004 on the file of the High Court.)

Between:

Ch. Appala Reddy S/o Late Appalaswamy, Line Inspector
EPDC of AP Ltd., Pedagantyada Rural, Visakhapatnam R/o 35-10-25,

Ramamurthy Pantulupeta, Kancharapalem, Visakhapatnam

..... APPELLANT

AND

1 Eastern Power Distribution Company of A.P., Ltd., rep by its Chairman and

Managing Director, Near Saraswathi Park, Visakhapatnam
2 The Superintending Engineer, Operation APEPDC, Opp. Green Park Hotel,

Visakhapatnam
3 The Divisional Engineer (Enquiries), APEPDC, Opp Green Park Hotel,

Visakhapatnam
4 The Divisional Engineer, Operation Zone-II, APEPDC,

Ramamurthypantulupeta, Kancharapalem, Visakhapatnam

.....RESPONDENTS

Counsel for the Appellant : MR.P.V.R.SARMA, FOR DR.P.B.VIJAY KUMAR

Counsel for the Respondents : MR.KISHORE SAMINENI (SC FOR AP TRANSCO)

The Court at the stage of admission, made the following :

JUDGMENT: (per the Hon'ble Sri Justice L.Narasimha Reddy)

The appellant was employed as a Line Inspector with the Eastern Power Distribution Company of A.P. Limited-the first respondent. The second respondent viz., the Superintending Engineer, Operation APEPDC is the appointing authority. The second respondent appointed the third respondent herein as an Enquiry Officer to conduct enquiry into certain allegations, levelled against the appellant. Consequently, the third respondent framed charges and served the same on the appellant through his Proceedings dated 22.11.2004. The appellant challenged the same by filing Writ Petition No.24324 of 2004.

In the writ petition, the plea of the appellant was that the appointment of the third respondent as an enquiry Officer was not preceded either by a show-cause notice or by a charge sheet and in that view of the matter, the same was vitiated. He placed reliance upon the Judgment of the Supreme Court in **STATE OF PUNJAB v. V.K.KHANNA**. On behalf of the respondents, it was pleaded that Regulation 10 (2) (a) of the Andhra Pradesh State Transmission Corporation Limited, Employees

Discipline and Appeal Regulations (for short **'the Regulations'**) enables them to appoint an Enquiry Officer straight away and that it was competent for the third respondent to issue a charge sheet. The learned single Judge dismissed the writ petition through order dated 12.02.2005. Hence, this Writ Appeal.

Sri P.V.R.Sarma, learned counsel for the appellant submits that the appellant was not issued any show-cause notice or charge sheet by the appointing authority and the latter has chosen to appoint an Enquiry Officer straight away. He submits that such a course of action is impermissible in law.

Sri Samineni Kishore, learned Standing Counsel for the respondents, on the other hand, submits that the third respondent is the Officer, who is entrusted with the regular function of conducting enquiries and requiring him to initiate and take up the disciplinary proceedings against the appellant, cannot be said to be illegal, in any way.

The controversy in this Writ Appeal is in a very narrow compass. The second respondent intended to initiate disciplinary proceedings against the appellant. However, he commenced the disciplinary proceedings against the appellant with the appointment of the third respondent as an Enquiry Officer through his proceedings dated 29.10.2004. The third respondent, in turn, framed charges against the appellant.

In any disciplinary proceedings, the necessity to appoint an Enquiry Officer arises only when the appointing authority points out certain acts of indiscipline on the part of the delinquent employee and the explanation offered by the employee is not satisfactory. On the other hand, where the explanation is found to be satisfactory, the necessity to proceed further does not arise or remain. In V.K. Khanna's case (1 supra), the Supreme Court reinstated this position of law and held that appointment of an Enquiry Officer even before a show-cause notice or charge sheet is served upon an employee is unknown to service jurisprudence. It was further observed that in such an event, an element of bias exists vis-à-vis the Enquiry Officer.

The appointing authority would be in a position to apply his mind to the facts of the case only when he calls upon an employee to explain as to the acts of mis-conduct, noticed by him. Depending on his satisfaction, on consideration of the explanation, he may have to choose either to proceed further or to drop the

proceedings. Even in a case, where he proposes to proceed further, but his inclination is only to impose a minor penalty, the necessity to appoint an Enquiry Officer may not arise. Conversely, the need to appoint an Enquiry Officer would arise if only the appointing authority is not satisfied with the explanation offered by the employee and that he proposes to inflict a major penalty.

All these steps can emerge only when a show-cause notice or charge sheet is given by the appointing authority. Such a course was, admittedly, not followed in this case. As observed earlier, initiation of disciplinary proceedings against the appellant commenced with the appointment of an Enquiry Officer and the ratio laid down by the Supreme Court gets attracted to the facts of the case. The Regulation 10(2)(a), upon which, reliance is placed by the respondents, does not salvage the situation. On the other hand, the Regulation does not support the course of action, adopted by the respondents. In clear terms, it mandates that the appointing authority shall appoint an Enquiry Officer only when he proposes to impose the penalty indicated in certain clauses. The proposal to impose such a penalty can, invariably, emerge only after ascertaining the views or obtaining the explanation from the employee concerned. Viewed from any angle, the order challenged in the Writ Appeal, cannot be sustained.

We accordingly allow the Writ Appeal and set aside the order of the learned single Judge. We allow the Writ Petition and set aside the proceedings challenged in it. However, we leave it open to the second respondent to issue a show-cause notice to the appellant and thereafter take further steps, in accordance with law. There shall be no order as to costs.

(T.MEENA KUMARI, J)

(L.NARASIMHA REDDY, J)

Dt: 13.04.2005

NOTE: LR copy to be marked

(b.o)

bsv/lvl

One Fair copy to the Honourable Smt.Justice T.Meena Kumari (for her Lordship's kind perusal)

One Fair copy to the Honourable Sri Justice L.Narasimha Reddy (for his Lordship's kind perusal)

To

1 The Chairman and Managing Director, Eastern Power Distribution Company

of A.P., Ltd., , Near Saraswathi Park, Visakhapatnam
2 The Superintending Engineer, Operation APEPDC, Opp. Green Park Hotel,

Visakhapatnam
3 The Divisional Engineer (Enquiries), APEPDC, Opp Green Park Hotel,

Visakhapatnam
4 The Divisional Engineer, Operation Zone-II, APEPDC,

Ramamurthypantulupeta, Kancharapalem, Visakhapatnam

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